

COUNTY OF ERIE
Local Law No. __-2005
Local Law Intro. No.6-2005

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ERIE COUNTY LEGISLATURE
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TO BE ENACTED BY THE ERIE COUNTY LEGISLATURE AS FOLLOWS:

SECTION 1. Short title.

This Local Law shall be known as the "Erie County Local Law to prohibit the Sale, Purchase and use of Alcohol Without Liquid (AWOL) Machines or Alcohol Vapor Devices within Erie County."

SECTION 2. Legislative Intent.

This Legislature hereby finds and determines that AWOL, and acronym for Alcohol With Out Liquid, is a machine that mixes spirits with pure oxygen. A cloudy alcohol vapor is created by pouring spirit with pure oxygen. A cloudy alcohol vapor is created by pouring a spirit into a "diffuser capsule" connected to an oxygen pipe, which can then be inhaled or snorted.

This Legislature also finds and determines that AWOL machine enables people to "snort" drinks such as vodka or absinthe through a tube into the nose or mouth, rather than drinking through the mouth. This Legislature further finds and determines that by bypassing the stomach and the filter of the liver, the alcohol vapor is absorbed through the blood vessels in the nose or lungs, creating a quicker and more intense hit on the brain.

This Legislature finds that experts have claimed that the practice of inhaling alcohol vapor is linked to causing brain damage.

The Legislature determines that the popularity of these AWOL machines is increasing in the nightclub and bar businesses throughout the county. It is being marketed as a way to get high without the hangover as well as a "dieter's dream" way of drinking since there are no calories derived from inhaling alcohol.

This Legislature further finds and determines that during the past two decades five major studies have estimated the economic cost of alcohol abuse in the United States at approximately \$185 billion for 1998.

This Legislature further finds that more than 70 percent of the estimated cost of alcohol abuse for 1998 were attributed to lost productivity (134.2 billion), including losses from alcohol-related illness (\$87.6 billion), premature death (\$36.5 billion), and crime (10.1 billion). The remaining estimated cost include health care expenditures (\$26.3 billion), as well as property and administrative cost of alcohol related motor vehicle crashes (\$16.7 billion), and criminal justice system cost of alcohol relates crime (\$6.3 billion).

This Legislature further determines that by the time they reach the eighth grade nearly 50 percent of adolescents have had at least one drink, and over 20 percent report having been "drunk". Approximately 20 percent of eighth graders and almost 50 percent of twelfth graders have consumed alcohol in the past 30 days. Approximately 30 percent of twelfth graders engage in heavy episodic drinking, now popularity termed "binge" drinking- that is, having at least five or more drinks on one occasion within the past 2 weeks –and it is estimated that 20 percent do so on more than one occasion. Apart from being illegal, underage drinking poses a high risk both the individual and society. For example, the rate of alcohol-related traffic crashes is greater for drivers ages 16 to 20 than for drivers 21 and older.

This Legislature further finds and determines that underage alcohol use is more likely to kill young people than all illegal drugs combined.

The Legislature further finds that AWOL machines have been banned in parts of Britain and Australia, but are gaining more popularity in the United States. They are available for sale and distribution through the internet and dealerships are in the process of being established in Florida, California, and New York.

Therefore, the purpose of this law is to ban the sale, purchase, and use of Alcohol With Out Liquid (AWOL) machines and alcohol vapor devices in Erie County.

SECTION 3. Definitions.

As used in this law, the following terms shall have the meanings indicated

A.) "AWOL" shall mean a device which mixes spirits with pure oxygen to produce a cloudy vapor which can be inhaled or snorted.

B.) "Person" shall mean any natural person, individual, corporation, unincorporated association, proprietorship, firm, partnership, joint venture, joint stock association, or other entity or business organization of any kind.

SECTION 4. Prohibitions.

Pursuant to Article 9, Section 2(C) 10 of the New York State Constitution, governing protection, health, safety, and well-being of persons, no person shall purchase, offer for sale or use an AWOL machine or alcohol vapor device within the County of Erie.

SECTION 5. Penalties

Any person who intentionally violates any provision of Section 3 of this law shall be guilty of an unclassified misdemeanor, punishable by a fine of up to One Thousand Dollars (\$1,000.00). Each violation shall constitute a separate and distinct offense.

SECTION 6. Applicability.

This law shall apply to any action occurring on or after the effective date of this law.

SECTION 7. Reverse Preemption.

This law shall be null and void on the day that Statewide or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent State or federal administrative agency issues and promulgates regulations preempting such action by the County of Erie. The County Legislature may determine via mere resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggered the provisions of this section.

SECTION 8. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder section, or part of this law, or in its application to the person, individual, corporation, firm partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

SECTION 9. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(C)(20),(21), and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATION (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Erie County Department of Environment and Planning (DEP) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

SECTION 10. Effective Date.

This law shall take effect immediately upon filing in the Office of Secretary of State.

DEMONE SMITH

TIMOTHY KENNEDY